IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SAFECO INSURANCE COMPANY OF AMERICA,	)	
Plaintiff,	)	Case No.
v.	)	
SHARON SMITH, S.M.S., a female minor child, and RANDALL TRAMP,	)	
Defendants.	)	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Safeco Insurance Company of America ("Safeco"), by and through its attorney of record, seeks declaratory relief pursuant to 28 U.S.C. § 2201 with respect to claims for insurance coverage asserted by defendants Sharon Smith and S.M.S. under an insurance policy issued to defendant Randall Tramp, and further states and alleges:

PARTIES

1. Plaintiff Safeco is an insurance company incorporated and existing under the laws of the state of New Hampshire, with its principal place of business located in Boston, Massachusetts.

2. Defendant Sharon Smith is a resident and citizen of the state of Missouri residing in St. Charles County, Missouri.

3. Defendant S.M.S., a female minor child, is, upon information and belief, a resident and citizen of the state of Missouri residing in St. Charles County, Missouri.

4. Defendant Randall Tramp is a resident and citizen of the state of Missouri, currently incarcerated at the Farmington Correctional Center in St. Francois County, Missouri.

JURISDICTION AND VENUE

5. Jurisdiction is proper pursuant to 28 U.S.C. § 1332, because this dispute is between citizens of different states, and the amount in controversy exceeds the sum of $75,000, exclusive of interest and costs.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a), because a substantial part of the events giving rise to this dispute occurred in this District.

7. This is an action for a Declaratory Judgment pursuant to 28 U.S.C. § 2201.

FACTUAL ALLEGATIONS

8. Upon information and belief, Sharon Smith is the estranged wife of Randall Tramp.

9. Upon information and belief, S.M.S. is the minor child of Sharon Smith and Randall Tramp.

10. Sharon Smith and S.M.S. have filed a petition in the Circuit Court of St. Charles, Missouri, to recover damages from defendant Tramp for conduct he directed toward S.M.S., case number 1611-CC01112. *See* Petition, Exhibit A.

11. In their Petition, Ms. Smith and S.M.S. allege that, at various times during the minor's childhood but "specifically in July 2015," defendant Tramp exposed himself in the nude in various states of arousal to the minor, his daughter; that he shared a bed with his daughter while he was naked; that he sexually molested and abused the child; and that he falsely imprisoned the minor.

12. S.M.S. and Ms. Smith allege that this conduct occurred when the minor was residing in the legal care and primary physical custody of her father, defendant Tramp, at 5249 Woosencraft Drive, Wentzville, St. Charles County, Missouri 63385.

13. S.M.S. alleges that she sustained emotional and psychological injuries as a result of the above-described conduct.

14. Ms. Smith alleges that she sustained emotional and psychological injuries as a result of observing her daughter's emotional and psychological distress.

15. Mr. Tramp was initially indicted by a St. Charles County, Missouri grand jury on September 15, 2015, with a Superseding Indictment filed on March 18, 2016, finding that Tramp was subject to prosecution for five counts of unlawful conduct, including causing the minor to touch his genitals, touching the minor with his genitals while in bed with her, and touching the minor's breast. *See* Superseding Indictment, Exhibit B.

16. Defendant Tramp pled guilty to Count 4 of the Superseding Indictment, for First Degree Child Molestation, a Class B felony, in violation of Mo. Rev. Stat. § 566.067. *See* Plea, Exhibit C. Tramp is currently incarcerated in the Farmington Correctional Center in Farmington, Missouri pursuant to this conviction.

17. Counsel for Ms. Smith and S.M.S. have made demand upon Safeco for payment of funds under a policy of homeowners' insurance issued by Safeco to defendant Tramp with respect to their alleged injuries.

18. An actual dispute and controversy presently exists between Safeco and defendants in that Ms. Smith and S.M.S. have filed a claim for personal injuries against

Safeco's insured, defendant Tramp, and have requested that Safeco pay out insurance policy proceeds in settlement of their claims against Tramp.

THE POLICY

19. Safeco issued to defendant Tramp a policy of homeowners' insurance with a policy period of December 1, 2014 to December 1, 2015 and a limit of liability for personal liability of $300,000 per occurrence (hereinafter, "the Policy"). *See* Exhibit D.

20. The Policy's insuring agreement provides liability coverage for defendant Tramp "If a claim is made or a suit is brought against any insured for damages because of ***bodily injury*** or ***property damage*** caused by an ***occurrence*** to which this coverage applies." Ex. D at Section II – Liability Coverages, Coverage E – Personal Liability, p. 14.

21. The Policy defines "occurrence" to mean "an accident . . . which results in: (1) ***bodily injury***." Ex. D, Policy Definitions, at p. 25.

22. The Policy defines "bodily injury" to mean "bodily harm, sickness or disease." Ex. D, Policy Definitions, at p. 24.

23. The Policy excludes from coverage any bodily injury

> [W]hich is expected or intended by any ***insured*** or which is the foreseeable result of an act or omission intended by any ***insured***;
>
> This exclusion applies even if:
>
> (1) such ***bodily injury*** or ***property damage*** is of a different kind or degree than expected or intended; or
>
> (2) such ***bodily injury*** or ***property damage*** is sustained by a different person, or persons, than expected or intended.

Ex. D at Section II – Liability Coverages, Liability Losses We Do Not Cover, ¶ 1.a, at p. 14.

24. The Policy excludes from coverage any bodily injury "which results from violation of criminal law committed by, or with the knowledge or consent of any ***insured***. This exclusion applies whether or not any ***insured*** is charged or convicted of a violation of criminal law." Ex. D at Section II – Liability Coverages, Liability Losses We Do Not Cover, ¶ 1.b, at p. 15.

25. The Policy excludes from coverage any bodily injury "arising out of physical or mental abuse, sexual molestation or sexual harassment." Ex. D at Section II – Liability Coverages, Liability Losses We Do Not Cover, ¶ 1.k, at p. 17.

26. The Policy also excludes coverage for "***bodily injury*** *to* an ***insured*** within the meaning of parts (1) or (2) of **Policy Definitions, 3.g. *Insured***." Ex. D at Section II – Liability Coverages, Liability Losses We Do Not Cover, ¶ 2.f, at p. 17.

27. Policy Definitions paragraph 3.g provides:

> "***Insured***" means:
>
> (1) you; and
>
> (2) so long as you remain a resident of the ***residence premises***, the following residents of the ***residence premises***:
>
> > (a) your relatives;
> >
> > (b) any other person under the age of 24 who is in the care of any person described in (1) or (2)(a) above.

Ex. D, Policy Definitions, at p. 24.

28. The Policy defines "residence premises" to mean the building where the insured resides and which is shown in the Policy Declarations. *See* Ex. D, Policy Definitions, at p. 26. The address shown in the Policy Declarations is 5249 Woosencraft Drive, Wentzville, MO 63385.

COUNT I – DECLARATION THAT THE POLICY AFFORDS NO COVERAGE FOR THE CLAIMS BECAUSE CLAIMANTS' INJURIES WERE NOT CAUSED BY AN "OCCURRENCE".

29. Safeco realleges and incorporates paragraphs 1-28.

30. The Policy provides liability insurance coverage for "bodily injury" that is "caused by an occurrence."

31. "Occurrence" means "an accident" under the Policy.

32. Defendant Tramp's pattern of sexual abuse and harassment of the minor does not constitute "an accident."

33. Accordingly, the claims of claimants Smith and S.M.S. are not within the Policy's insuring agreement, as their alleged injuries were not caused by an occurrence.

WHEREFORE, pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201, Plaintiff Safeco Insurance Company of America requests that the Court enter its judgment declaring that the Policy provides no liability coverage for the claims of Smith and S.M.S. against Randall Tramp, because the claimants' alleged injuries were not caused by an occurrence as defined by the Policy.

COUNT II – DECLARATION THAT THE POLICY EXCLUDES COVERAGE FOR THE CLAIMS OF BOTH S.M.S AND SHARON SMITH.

34. Safeco realleges and incorporates paragraphs 1-33.

35. Additionally or alternatively, one or more exclusions to coverage under the Policy preclude coverage for the claims made by Smith and S.M.S. against defendant Tramp.

36. The Policy excludes coverage for bodily injury that is "expected or intended" by the insured, or which is the "foreseeable result" of an action that is intended by the insured, even if the bodily injury is of a different degree or kind than expected or intended and even if the bodily injury is sustained by a different person than expected or intended.

37. Smith's and S.M.S.'s injuries were intended or expected by defendant Tramp, and/or are the natural and foreseeable result of his conduct.

38. Notwithstanding attempts to characterize defendant Tramp's conduct in terms of negligence, the conduct described in the Petition consists of Tramp's exposure of his nude body in various states of arousal to his minor child and sharing a bed with the minor while Tramp was nude. Furthermore, although not alleged in the Petition (*see generally* Ex. A), Tramp admitted to knowingly touching the minor child in an unlawful sexual manner. *See* Indictment, Ex. B.; Plea, Ex. C.

39. Accordingly, the emotional and psychological harm alleged by Smith and S.M.S. was expected or intended by Tramp, and/or is the foreseeable result of his knowing conduct, and is therefore excluded from coverage under the Policy.

40. Additionally or alternatively, the Policy excludes coverage for the claims of Smith and S.M.S. because it excludes coverage for bodily injury that results from violation of criminal law by Tramp, whether or not he was charged or convicted of a crime.

41. Tramp pled guilty to child molestation, a violation of Missouri criminal law. Tramp was also indicted on four additional counts related to child sexual abuse of the minor.

42. Accordingly, the injuries alleged by Smith and S.M.S. are excluded from coverage under the Policy because they resulted from Tramp's violations of criminal law.

43. Additionally or alternatively, the Policy excludes coverage for the claims of Smith and S.M.S. because it excludes coverage for bodily injury that arises out of physical or mental abuse, sexual molestation or sexual harassment.

44. The conduct of Tramp alleged by Smith and S.M.S. constitutes physical or mental abuse, sexual molestation, and/or sexual harassment.

45. Accordingly, the injuries alleged by Smith and S.M.S. are excluded from coverage under the Policy because they resulted from Tramp's physical or mental abuse, sexual molestation, and/or sexual harassment.

WHEREFORE, pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201, Plaintiff Safeco Insurance Company of America requests that the Court enter its judgment declaring that the Policy provides no liability coverage for the claims of S.M.S. and Sharon Smith by virtue of the expected and intended exclusion, the criminal acts exclusion, and/or the sexual molestation exclusion.

COUNT III – DECLARATION THAT THE CLAIMS OF S.M.S. ARE EXCLUDED FROM COVERAGE BECAUSE SHE IS "AN INSURED" UNDER THE POLICY.

46. Safeco realleges and incorporates paragraphs 1-45.

47. Additionally or alternatively, the Policy excludes coverage for the claims of S.M.S. because it excludes coverage for bodily injury to an insured.

48. S.M.S. was, at time of the alleged conduct by Tramp, "an insured" within the meaning of the Policy, because she was a relative residing at the insured premises.

49. Accordingly, S.M.S.'s claims of bodily injury are excluded from coverage under the Policy.

WHEREFORE, pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201, Plaintiff Safeco Insurance Company of America requests that the Court enter its judgment declaring that the Policy provides no liability coverage for the claims of S.M.S. because, as an insured under the Policy, her claims for bodily injury are excluded from coverage.

COUNT IV– DECLARATION THAT SHARON SMITH'S ALLEGED PURE EMOTIONAL DISTRESS DAMAGES DO NOT CONSTITUTE "BODILY INJURY."

50. Safeco realleges and incorporates paragraphs 1-45.

51. The Policy affords coverage for "bodily injury" caused by the insured.

52. Ms. Smith alleges that she sustained emotional distress as a result of observing the emotional distress experienced by her daughter, S.M.S.

53. Ms. Smith does not allege that defendant Tramp directed any conduct at her, nor that she sustained any physical injury or physical impact as a result of Tramp's conduct.

54. Ms. Smith's claim for pure emotional distress does not constitute "bodily injury."

WHEREFORE, pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201, Plaintiff Safeco Insurance Company of America requests that the Court enter its judgment declaring that Sharon Smith's alleged damages do not constitute "bodily injury" under the Policy.

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